IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

MFA.No. 265 of 1997(Y)

OPMV.940/1991 of ADDL.MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM
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APPELLANT:

N.RAJAN,AGED 48, S/O.NARAYANAN,KURISUTHARA PARAMBIL HOUSE, VADUTHALA P.O., KOCHI-23.

BY ADV. SRI.ANIL S.RAJ

RESPONDENTS:

1.S.P.SURESWAMY,W/O.C.K.SASIDHARAN,13/1187, KARUVELIPADY, KOCHI-5.

2.M.H.NASEER,S/O.HAMZA,XIII/1053, KARUVALIPADY, KOCHI - 5.

3.THE ORIENTAL INSURANCE CO. LTD., REP. BY ITS DIVISIONAL MANAGER, D.O.,ERNAKULAM.

BY ADV. SRI.MATHEWS JACOB (SR.)

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 21/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & V.GIRI, JJ.

M.F.A.NO.265 OF 1997 (F)

Dated this the 21st day of August, 2007

J U D G M E N T

KOSHY,J.

Appellant/Claimant, a barber by profession suffered serious injuries in a motor accident and he claimed compensation of Rs.4,00,000/-. Tribunal found that accident occurred due to the negligence of the driver of the vehicle insured by the 3rd respondent, Insurance company and total compensation awarded was Rs.76,000/-. Only quantum of compensation is disputed in this appeal.

2. Tribunal found that Rs.2,000/- is the monthly income of the appellant, being a barber and considering the fact that accident occurred in 1991, we are of the view that there is no need for enhancement in the monthly income assessed by the tribunal. As far as the injuries are concerned, Ext.A2 treatment certificate shows that petitioner has sustained fracture

dislocation L1/L2 spine and fracture BB (L) leg lower $^{1}/_{3}^{rd}$ Type II compound and he was discharged on 23.5.1991 and continued treatment as out patient. According to the tribunal, he must have pain and is under treatment for four months and injuries sustained by him are very serious. Ext.A5 medical certificate shows that he had 30% disability. Tribunal accepted the above certificate. However, compensation was not calculated on a scientific basis. According to the claimants, even though physical disability is only 30%, he is unable to do the work as a barber, and therefore, especially because of spine fracture, he is entitled to a compensation for 100% disability. We are of the view that it is enough to grant compensation on the basis of Ext.A5 medical certificate. He was 42 years old. Taking guideline from the Second Schedule, 15 is the multiplier and if that be so, compensation payable will be Rs.2,000 x 12 x 15 x $^{30}/_{100}$ = Rs.1,08,000/-. Tribunal has granted Rs.25,000/- for disability and Rs.25,000/- for loss of earning power. If the above Rs.50,000/- is deducted, balance is Rs.58,000/-. It is submitted that for treatment expenses, Rs.25,000/- was claimed. But only Rs.3,000/- was granted. It

is submitted that he needs continuous treatment because of the injury suffered and no amount was awarded for future expenses and for transportation expenses. Considering these aspects, for treatment expenses, we award Rs.2,000/- more. It is submitted that compensation awarded under all heads are meagre. Considering the total award amount, no enhancement on other heads is necessary. Thus total additional compensation payable will be Rs.60,000/- over and above the decreed amount by the tribunal. The above amount should be deposited by the 3rd respondent, Insurance company with 7.5% interest from the date of application till deposit. Since the accident occurred about $1^1/_2$ decades ago, on deposit, claimant is entitled to withdraw the same. Accordingly appeal is partly allowed.

J.B.KOSHY, JUDGE

V.GIRI, JUDGE

prp

J.B.KOSHY & V.GIRI, JJ.

M.F.A.NO.265 OF 1997 (F)

J U D G M E N T

21st August, 2007